

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

APR 02 2019
JULIA C. DUDLEY, CLERK
BY: DEPUTY CLERK

UNITED STATES OF AMERICA)
v.) Criminal No. 7:18-cr-49
DIAMOND TOPAZ BROWN,) By: Michael F. Urbanski
Defendant.) Chief United States Dis

ORDER

This matter is before the court on a motion to suppress, ECF No. 53, filed by defendant Diamond Topaz Brown on March 28, 2019. The government filed its response in opposition, ECF No. 54, on March 29, 2019, and the court held a hearing on April 1, 2019. The trial in this case was set for April 8, 2019. Upon consideration of Brown's motion and for the reasons stated on the record in open court and briefly summarized below, Brown's motion to suppress is **DENIED** and objection to a continuance is **OVERRULED**.

The government indicated that it requested the materials in question following the pretrial conference held on March 18, 2019. The government further indicated that although it only requested two days' worth of recorded phone calls and video visits, it ultimately came into possession of a nearly a month's worth of such materials and promptly produced this information to the defense. The court finds no evidence that the government intentionally delayed or otherwise acted in bad faith. See United States v. Hasting, 126 F.3d 310, 317 (4th Cir. 1997). The court further finds no evidence of prejudice given that the government does not intend at this time to use the discovered materials in its case in chief. Therefore, the motion to suppress material is **DENIED**. See United States v. Golyansky, 291 F.3d 1245,

1249 (10th Cir. 2002) (“It would be a rare case where, absent bad faith, a district court should exclude evidence rather than continue the proceedings.”).

Nevertheless, upon consideration of defense counsel’s schedule and constitutional obligation to provide effective assistance of counsel, the court finds that the ends of justice served by continuing this case outweighs the best interests of the public and the defendant in a speedy trial. In order to adequately prepare for trial, defense counsel will need to review approximately 38.25 hours of material for exculpatory information. Therefore, the court will continue this matter to May 2-3, 2019. Brown’s objection to the continuance is **OVERRULED**. It is hereby **ORDERED** that the period of time necessitated by this continuance is excluded for speedy trial purposes pursuant to 18 U.S.C. § 3161(h)(7)(A). It is further **ORDERED** that in the event the government decides to introduce into evidence any of the materials that are the subject of this motion, it is to particularly identify this information by file name, date, and time stamp in the recordings to defense counsel.

It is SO **ORDERED**.

Entered: April 1, 2019



Michael F. Urbanski
United States District Judge